

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Allen Wilcox)	
Charging Party,)	
)	
v.)	HRC Charge No. HV09-0005
)	HUD Charge No. 01-08-0527-8
Inglex & Johmol LTD)	
Respondent.)	

FINAL DETERMINATION

Pursuant to 9 V.S.A. §4554, the Vermont Human Rights Commission enters the following Order:

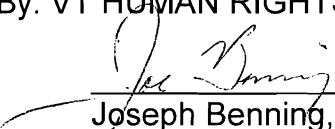
1. The following vote was taken on a motion to find that there are reasonable grounds to believe that Inglex & Johmol LTD, the Respondent, illegally discriminated against Allen Wilcox, the Charging Party, in housing on the basis of race and color in violation of 9 V.S.A. §4503(a)(1) of the Vermont Fair Housing and Public Accommodations Act.

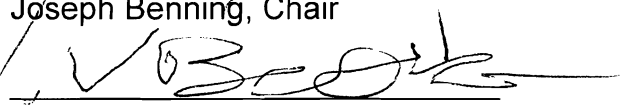
Joseph Benning, Chair	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Nathan Besio	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Shirley Boyd-Hill	For <input type="checkbox"/>	Against <input type="checkbox"/>	Absent <input checked="" type="checkbox"/>	Recused <input type="checkbox"/>
Mary Marzec-Gerrior	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Donald Vickers	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Entry: Reasonable grounds <input checked="" type="checkbox"/> Motion failed <input type="checkbox"/>				

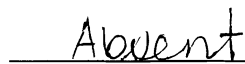
2. Because the Human Rights Commissioners found that there are reasonable grounds to believe that Inglex & Johmol LTD, the Respondent, illegally discriminated against Allen Wilcox, the Charging Party, in violation of the Vermont Fair Housing and Public Accommodations Act, a final attempt to resolve this part of Charge No. HV09-0005 through settlement shall be completed by June 18, 2009.


Dated at Montpelier, Vermont this 18th day of December 2008.

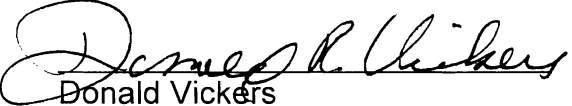
By: VT HUMAN RIGHTS COMMISSION


Joseph Benning, Chair


Nathan Besio


Shirley Boyd-Hill


Mary Marzec-Gerrion


Donald Vickers

INVESTIGATIVE REPORT

HRC Case No.: HV09-0005

HUD Case No.: 01-08-527-8

CHARGING PARTY: Allen Wilcox

RESPONDENT: James Ruth – Inglex & Johmol LTD

CHARGE: Housing/race-color

Summary of Charge: On August 12, 2008, Allen Wilcox filed a Charge of Discrimination alleging that James Ruth refused to rent an apartment to him and his family based on his race and his color. Specifically, Mr. Wilcox alleges that he and his fiancé informed Mr. Ruth that they wanted to rent his vacant apartment. Mr. Ruth refused to rent it to them and instead rented it to a white family who had contacted Mr. Ruth after Mr. Wilcox's family had requested the apartment.

Summary of Response: On September 10, 2008, James Ruth filed a response to the Charge of Discrimination denying that he discriminated against Mr. Wilcox because of his race or color. Mr. Ruth stated that he did not rent the apartment to Mr. Wilcox because Mr. Wilcox was seeking a three-bedroom apartment and the apartment he had available was no longer considered a three-bedroom apartment by the City of Rutland.

Preliminary Recommendations: This investigative report makes a preliminary recommendation that the Human Rights Commission find that there are **reasonable grounds** to believe that Mr. Ruth discriminated against Mr. Wilcox based on his race and color in violation of 9 V.S.A. 4503 (a)(1).

INTERVIEWS

9/19/08 – Pam Petrie, City of Rutland assistant building inspector.

9/29/08 - Frank Parker, downstairs tenant at 7 Clover St., Rutland, VT.

10/03/08 & – Howard Lear, Kari William's brother-in-law, upstairs
10/17/08 tenant who did repair work on apartment at 7 Clover
St., Rutland, VT.

10/06/08 – Allen Wilcox & Kari Williams, charging party and his
fiancé.

10/06/08 – James Ruth, responding party, owner of the duplex at 7
Clover Street.

DOCUMENTS

08/14/08 – HRC Discrimination Charge

09/10/08 – Response to Discrimination Charge, including:

- Letter to Mr. Ruth from City of Rutland re:
building code violations (5/2/08)
- Certified letter to Frank & Jessica Parker re:
use of 3rd bedroom (9/9/08)

09/19/08 – Copy of City of Rutland occupancy ordinance

10/06/08 – Floor plan for Clover St. apartment prepared by Mr. Ruth

10/06/08 – Bill for apartment repair work done by Howard Lear

10/20/08 – Mr. Parker's rent payment history, phone message re:
Mr. Parker leaving the apartment, itemization of repairs
on Mr. Parker's apartment after he moved out

ELEMENTS OF PRIMA FACIE CASE

- Mr. Wilcox is a member of a protected class
- Mr. Wilcox applied for and was qualified for the rental unit
- Mr. Ruth took or failed to take a housing action that adversely
affected Mr. Wilcox
- The apartment remained available after Mr. Wilcox was rejected

I. FACTS

A. Undisputed Facts

Mr. Wilcox is a person of color. His family consists of his fiancé, Kari Williams, and three minor children whose ages are 12 years, 8 years and 9 months.

Mr. Ruth owns a duplex at 7 Clover Street in Rutland, Vermont. On or about May 2, 2008, after inspecting Mr. Ruth's rental property, the City of Rutland building inspector directed Mr. Ruth to make numerous repairs to the property before he would issue an occupancy certification as a three-bedroom unit. On June 2, 2008, Mr. Ruth took possession of the downstairs unit after evicting the former tenant. At that time Mr. Ruth hired his upstairs tenant, Howard Lear, to do some repairs to the downstairs property.

Mr. Wilcox and Ms. Williams, who is Mr. Wilcox's fiancé and Mr. Lear's sister-in-law, wanted to rent the downstairs apartment. On or about the first week of July, Mr. Wilcox and Ms. Williams went to Mr. Ruth's office to discuss renting the apartment. They were aware that the unit was available for rent because they had several discussions with Mr. Lear about the availability of the apartment and he told them to speak with Mr. Ruth.

When Mr. Wilcox and Ms. Williams approached Mr. Ruth about renting the apartment, he told them that he was not ready to make a decision about renting the apartment. He did not take Mr. Wilcox's or Ms. Williams' name or contact information.

Subsequent to meeting Mr. Wilcox and Ms. Williams, Mr. Ruth and Mr. Lear spoke about the Wilcox-Williams family's desire to rent the apartment. At sometime after Mr. Ruth's conversation with Mr. Lear and prior to August 1, 2008, Frank and Jessica Parker, a white family of four who had previously rented from Mr. Ruth, approached

Mr. Ruth about renting the apartment. Mr. Ruth rented the unit to them and they used the "third bedroom" as a bedroom.

B. Apartment Size¹

The apartment that Mr. Wilcox and his family wanted to rent consists of six rooms. Prior to the City of Rutland's May 2008 inspection of the apartment, Mr. Ruth rented it as a three-bedroom apartment with a kitchen, living/dining area and bathroom. The City of Rutland has told Mr. Ruth that one of the "bedrooms" (hereinafter "the third bedroom") could no longer be used as a sleeping area because the egress window is too small.² One bedroom is 12'x12.5' or 150 sq. feet – this room qualifies for a two-person bedroom. The other "bedroom" is 8'x8' or 64 sq. feet. This room does not qualify for use as a bedroom but is being used as a bedroom by the Parkers.³ The "third bedroom" is 10.5'x8' or 84 sq. feet. This room does not qualify as a bedroom at this time because the egress window is too small.

However, even without the 8'x8' room or the 10.5'x8' room qualifying as bedrooms there is enough square footage in the apartment for a family of five if the living/dining area (288 sq. feet) is used as a living/sleep area and the kitchen (154 sq. feet) is used as a kitchen/dining area.⁴

¹ This is based on Mr. Ruth's measurements/diagram of the apartment. (Attachment #1)

² If the window that is presently in the room is replaced with a larger window this room can be used as a bedroom for two people.

³ The City of Rutland Revised Ordinances regarding occupancy, Title 9 §1314(b) (Attachment #2), states that in order for a room to be used as a bedroom it needs to be a minimum of 70 sq. feet.

⁴ If the dining area is combined with the kitchen area rather than the living area this would leave 188 sq. feet in the living area that could be used as a sleeping area for three people which requires 170 sq. feet by ordinance.

C. Statements of Allen Wilcox & Kari Williams

Mr. Wilcox reported the following account regarding his efforts to rent the 7 Clover Street apartment from Mr. Ruth:

Mr. Wilcox's fiancé's sister resides with Mr. Howard Lear in the upper apartment at 7 Clover Street in Rutland, Vermont. Mr. Lear was doing repair work for Mr. Ruth, the owner, in the lower rental unit during June and July 2008 because the previous tenant had left the apartment in very poor condition and the City of Rutland had issued a list of repairs required under the city's occupancy ordinances. While he was working on the unit Mr. Lear told his sister-in-law that Mr. Ruth had asked him to help find a good tenant for the apartment. The two families, especially the children, were excited about the possibility of living in the same building.

Mr. Wilcox told Mr. Lear that they wanted to rent the lower apartment. Mr. Lear told Mr. Wilcox that he thought this would be ok with the owner but they should stop by Mr. Ruth's office, which is next door to the duplex, to introduce themselves and inquire about renting the apartment.

Mr. Wilcox and his fiancé attempted to connect with Mr. Ruth several times. Finally, a few days before or after the Fourth of July they found him in his office. They went to his office with enough money to cover a security deposit because based on their conversations with Mr. Lear they thought "it was a done deal." When they went into Mr. Ruth's office Mr. Wilcox introduced himself but Mr. Ruth did not shake either Mr. Wilcox's or Ms. Williams' hand. He glanced at Mr. Wilcox and then directed all of his remarks to Ms. Williams. The meeting was short because Mr. Ruth said, "I am not going to discuss anything until the repairs are 100% complete." Ms. Williams asked when it would be good time to talk to him about

renting the lower apartment and he replied maybe in a few weeks or a month. Mr. Wilcox and Ms. Williams were not asked to leave their contact information before leaving. Ms. Wilcox and Ms. Williams thought Mr. Ruth was "rather rude."

Mr. Wilcox said that sometime during the second week in July Mr. Lear called him and said that he had spoken to Mr. Ruth about their family renting the apartment. Mr. Wilcox recalled Mr. Lear saying that Mr. Ruth was not going to rent the apartment to them because it could no longer be used as a three-bedroom apartment. Mr. Ruth had explained to Mr. Lear that because the egress window in one of the former bedrooms was too small it could no longer be used as a bedroom.

Ms. Williams also said her sister told her that Mr. Ruth was not going to allow the "third bedroom" to be used as a bedroom because since the June flood, the building inspectors were coming around the property.

About ten days later Ms. Williams' sister called her and told her that a white family with children had moved into the apartment and was using the room that did not meet the occupancy requirements as a bedroom. She had noticed that there was a bed and bureau in the room. It was this event that prompted Mr. Wilcox to file this discrimination charge.

This investigation asked Mr. Wilcox why he believed Mr. Ruth did not want to rent to his family. Mr. Wilcox said he was aware that there had been some drug activity in the area. He said the dealers were black and Mr. Wilcox believed Mr. Ruth equated him with them.⁵ Mr. Wilcox also said that he is 45 years old and has dealt with attitudes and looks from white people his whole life. He said when he

⁵ Mr. Wilcox stated that when he thought he would be moving into the Clover Street neighborhood, he called the police to report suspected drug dealing activity.

worked on the mountain at Killington he experienced many racial comments from white ski hill volunteers but he never pursued addressing them. He said he experiences race based treatment like "cops" asking him where he is going for no specific reason all the time. "It is a sixth sense – I felt Ruth's rejection immediately."

Ms. Williams, who is white, told this investigation that experiencing Mr. Ruth's reaction toward them caused her to feel "a way she had never felt before." She said, "I wanted to cry. Since that experience I have not wanted to look at another apartment because I don't want to ever feel that way again."

OTHER INFORMATION –

Mr. Wilcox has resided at his present address just outside Rutland for approximately twelve years. The rent at his present apartment is \$750 including heat. He believed the rent at the Clover Street apartment was \$650 not including heat. Mr. Wilcox stated that he paid his rent on the first of the month 80% of the time. He explained that when he resided in the apartment alone he had an agreement with the property owner that allowed him to occasionally split the rent payments over the course of the month. He never received an eviction notice. Mr. Wilcox is not currently employed. He had worked at Killington Mountain for 15 years and during that time he became the lift supervisor. However, he lost his job when new owners purchased the ski hill because the new owners "got rid of the people with larger salaries who had been there a long time." He recently worked in Bethel but decided to leave that position because of the long drive, cost of fuel and a new baby in their house. Ms. Williams is a seasonal employee at Killington Mountain. However, Mr. Wilcox stated

that he never had an opportunity to provide Mr. Ruth with this information.

D. Statements of James Ruth

Mr. Ruth recounted the following regarding renting the lower apartment:

The lower apartment at 7 Clover Street had been trashed by the former tenant, whom he evicted. Mr. Ruth stated that he believed that in retaliation for evicting her, the former tenant contacted the City of Rutland building inspector. On May 2, 2008 the Building Inspector's office sent him a three page list of violations that had to be corrected before anyone could occupy the property.⁶ One of the violations included a determination that a room previously used as a bedroom had an insufficient egress window. Mr. Ruth hired Mr. Lear to do some of this repair work.

In addition to the building code violations, the property sustained additional damage in the June 14, 2008 flooding that occurred in Rutland. Mr. Ruth said that the furnace was affected and at that time he was not sure how much it would cost to repair it. Mr. Ruth stated because of all these repairs he had been uncertain about the future of the property; he was not sure whether he would sell the property or continue to rent it.

Mr. Ruth did not recall the exact date that Mr. Wilcox and his fiancé came to talk to him about renting the apartment. He believed it was around the beginning of July. He recalled briefly meeting them and telling them that the apartment was not available at that time and he was not sure when it would be. Mr. Ruth told this investigation that

⁶ This investigation reviewed the list of violations and found that many of the violations listed in the report were of the type that would not be connected with the previous tenant trashing the property.

he spoke mostly to Ms. Williams rather than Mr. Wilcox because “she did all the talking.” Mr. Ruth said he did not take Mr. Wilcox’s or Ms. Williams’ contact information because he was not ready to take names. Mr. Ruth stated that in addition to Mr. Wilcox two other people stopped by to inquire about renting the apartment but he did not have their names or the dates they stopped by.

Mr. Ruth could not recall exactly when Mr. Lear talked with him about the Wilcox family renting the apartment. He thought it might have been the third week of July or a week or two after Mr. Wilcox had talked to him about the apartment. Mr. Ruth remembered that the discussion included the fact that Mr. Wilcox was looking for a three-bedroom apartment. He recalled telling Mr. Lear that the lower apartment could not be used as a three-bedroom apartment because one bedroom did not have a large enough egress window.

Some time after his discussion with Mr. Lear, Mr. Ruth was not sure when, Frank and Jessica Parker noticed that the apartment was empty and stopped by to inquiry about renting it. Mr. Ruth said that prior to the Parkers expressing an interest in the apartment he still had not made up his mind about what to do with the property. The Parkers had rented from Mr. Ruth before so he agreed to rent it to them because he had a “generally good experience with them as tenants.” The Parkers have two children and a child from a previous marriage that regularly visits them.⁷ Mr. Ruth stated that he told the Parkers that the apartment was no longer a three-bedroom apartment and that they could not use the one room as a bedroom. The Parkers moved in on or about August 1, 2008.

On September 9, 2008, three weeks after Mr. Ruth became aware of this discrimination charge and the day before filing his

⁷ Mr. Ruth was not aware how frequently the third child visited the Parkers.

response to this charge, his attorney sent the Parkers a letter instructing them to cease using the “third-bedroom” as a bedroom. The letter stated it had recently come to Mr. Ruth’s attention that they might be using the room as a bedroom.

OTHER INFORMATION

The 7 Clover Street duplex is Mr. Ruth’s only rental property. Mr. Ruth told this investigation that he has no formal application process for renting his apartments. In the past Mr. Ruth has used word-of-mouth, bulletin boards and occasionally a newspaper ad to find tenants.

This is Mr. Lear’s second tenancy with Mr. Ruth.

This is also Mr. Parker’s second tenancy with Mr. Ruth. During his family’s first tenancy they originally lived in the downstairs apartment but when the upstairs apartment became available, they moved upstairs because Ms. Parker felt safer on the second floor – she had concerns about drug dealer activity on Clover Street.

The Parker’s first tenancy ended in January 2008 when they moved out of their apartment without giving Mr. Ruth notice. Mr. Ruth stated that the Parkers left because of the dogs and the noise in the downstairs apartment.⁸ After the Parkers left and before Mr. Lear could move into the former Parker apartment, Mr. Lear did substantial clean-up and repair work in the apartment. Mr. Ruth estimated that Mr. Lear did approximately \$325 worth of work and Mr. Ruth spent an additional \$837 on other labor and materials to repair and clean the apartment.

Mr. Ruth told this investigation that when Mr. Parker moved out, Mr. Parker left him a letter stating that he would come back to clean-

⁸ The downstairs tenant at that time was the person who was eventually evicted by Mr. Ruth.

up the apartment. Mr. Ruth was unable to locate this letter but did find a note regarding a phone call from Mr. Parker. The note stated "Parker called Tues. 1/22/08 at 2 am & left msg. that he moved out & has tried to get back in to clean, but door lock has been changed!!"

Mr. Ruth provided this investigation with a history of Mr. Parker's rent payments. The report reflects that over approximately 30 months Mr. Parker paid his rent in one payment at the beginning of the month about 50% of the time. The other months he made multiple payments during the course of the month.

This investigation asked Mr. Ruth if he intended to replace the window in the "third bedroom" with a larger window so it could be used as a sleeping room. He stated that he had not replaced it at this time but eventually intended to replace it.⁹ Mr. Ruth recalled that he might have told Mr. Lear and/or Mr. Parker that he intended to replace the window. Mr. Ruth said that he thought the window replacement would cost between \$400 and \$600 and that he would probably replace it when he got the money.

In his written response to Mr. Wilcox's discrimination charge, Mr. Ruth clearly stated that prior to Mr. Wilcox's charge he had no knowledge that the Parkers "may" have used the "third bedroom" as a bedroom. Mr. Ruth's response indicates that it was not until September 10, 2008 that he followed up on this issue in person.¹⁰

⁹ On 11/17/08, while writing this investigative report Mr. Wilcox contacted the HRC and stated that the window was being replaced that day. This investigation confirmed that a new window was installed.

¹⁰ In a follow up question to Mr. Ruth, this investigation asked Mr. Ruth to supply all dates since 9/9/08 that he had contact with the Parkers. He recalled that to the "best of his recollection" that his first contact after filing his response, 9/9/08, was on 9/17/08. This investigation points this out as a discrepancy and does not assign meaning to it.

E. Statements of Frank Parker

Mr. Parker stated that he has lived at 7 Clover Street two times – the first time for about three years and the second time since August 2008. He said that sometime during the last two weeks of July 2008 he and his wife were driving past the property and noticed the apartment was again empty. They stopped by Mr. Ruth's office to talk with him about the apartment and he told them could rent the apartment.

Mr. Parker stated that Mr. Ruth said they could only use two bedrooms "right now" because he needed to put a bigger window in the other bedroom. Mr. Parker said that they have asked Mr. Ruth when he is planning to install the bigger window but he has not committed to any specific date. Mr. Parker wants to be able to use the "third bedroom" for sleeping because his step-daughter visits on the weekend. Based on what Mr. Ruth told him he believed that the window would be replaced.

Mr. Parker confirmed that it was after Mr. Ruth sent him the September "cease and desist" letter regarding the "third-bedroom" that he moved his two daughters' beds out of the bedroom and into the dining/living area.

F. Statements of Howard Lear

Mr. Lear said he did repair work for Mr. Ruth on the lower apartment at 7 Clover Street during June and July 2008. He told this investigation that Mr. Ruth asked him to "keep his eyes open and to get phone numbers" of people who wanted to rent the apartment. Mr. Lear said Mr. Ruth told him that "he did not want any scumbags" that he wanted people who "would pay rent and keep the place nice."

Mr. Lear said he first spoke to Mr. Ruth about the Wilcox-Williams family moving into the lower apartment just before the June

14th flood. Mr. Lear recalled that Mr. Ruth said he was not interested in finding renters until the repairs in the apartment were done.

Immediately after the flood, Mr. Lear told Mr. Ruth that it was his sister-in-law and her fiancé who wanted the apartment. At that time Mr. Ruth said that he wanted to take care of the flood damage before talking to anyone.

Mr. Lear said that near the end of the project¹¹ Mr. Ruth asked him if his relatives were still interested in the apartment. Mr. Lear told him that they were. Mr. Lear stated that it was during this conversation that Mr. Ruth asked him how many children were in the family and when he told Mr. Ruth that there were three, Mr. Ruth said he could not rent to them. Mr. Ruth then explained the problem with the "third bedroom" window.

This investigation asked Mr. Lear if he knew when the Parkers were told they could have the apartment. Mr. Lear said that he knew the Parkers asked Mr. Ruth about the apartment after Mr. Wilcox had talked with Mr. Ruth. Mr. Lear thought he discovered that the Parkers were renting the apartment when he had one more day of repairs left at the apartment.

Mr. Lear recalled the Parkers saying that "Jim had told them it (the apartment) was available and was theirs if they wanted it." Mr. Lear also said that Mr. Ruth does not use applications when renting his apartments.

This investigation asked Mr. Lear if the Parkers were the tenants who had lived in his apartment just prior to his tenancy. He replied that they were and that "he was surprised" that Mr. Ruth "allowed people to move back into a place they had trashed before." He stated

¹¹ Mr. Ruth provided this investigation with a copy of a bill for Mr. Lear's work on the apartment. The bill indicates that he finished working on the apartment on July 7, 2008.

that he thought it had cost about \$3500 to “get the place livable” before he moved in. Mr. Lear recalled that it took about two or three weeks of work on the apartment before he could move in. He said there was “trash all over, dog urine soaked into everything, the whole apartment needed painting, new appliances were purchased, and new flooring and new carpet was needed.” Later in the interview Mr. Lear again said he did not understand why Mr. Ruth “took someone who had previously trashed the place – I was pretty upset.” ¹²

Additional Information

The City of Rutland Building Inspector confirmed that the “third bedroom” in the lower apartment at 7 Clover Street, Rutland, Vermont needed to have a larger egress window before it could be used as a “sleeping area.”

II. ANALYSIS

Vermont’s Fair Housing and Public Accommodations Act (FHPAA), 9 V.S.A. §4503(a)(1) states:

It shall be unlawful for any person:

To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or other real estate to any person because of the race, sex, sexual orientation, age, marital status, religious creed, color, national origin or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

ELEMENTS of PROOF for HOUSING DISCRIMINATION

¹² On 10/17/08 during a follow-up interview Mr. Lear told this investigation that he believes the “third bedroom” is still being used as a bedroom and that a third child is at the apartment on a very regular basis. He also thought there were other people living in the apartment, besides the Parkers and their children.

- Mr. Wilcox is a member of a protected class
- Mr. Wilcox applied for and was qualified for the rental unit
- Mr. Ruth took or failed to take a housing action that adversely affected Mr. Wilcox
- The apartment remained available after Mr. Wilcox was rejected¹³

To prevail in this case Mr. Wilcox must first establish a *prima facie* case by proving each of the above-mentioned elements by a preponderance of the evidence. (See *In re Smith*, 169 Vt. 162, 168 (1999) (“Our case law provides that a preponderance of the evidence is the usual standard of proof in state administrative adjudications.”))

Once the charging party has proven a *prima facie* case, demonstrating differential treatment, a presumption/inference of illegal discrimination is created and the burden shifts to the respondent “to articulate some legitimate, nondiscriminatory reason” for his treatment of the charging party. McDonnell Douglas Corp. v. Green, 411 U.S. 792 S. Ct. (1973).¹⁴ If the respondent “articulates a clear and reasonably specific” reason for his/her action the initial inference of discrimination disappears and the burden shifts back to the charging party to present evidence of the pretextual nature of the respondent’s stated reason. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253, 258 (1981). The charging party must convince the fact finder that it is more probable than not that the respondent’s adverse housing action(s) was motivated by an illegal discriminatory factor(s). *Adapted from* U.S. Postal Services Bd. Of Governors v. Aikens, 460 US 711 (1983).

¹³ These elements of a *prima facie* housing case were adapted from Mencer v. Princeton Square Apartments, 228 F.3d 631, 634-35 2000 FED App. 350P (6th Cir. 2000).

¹⁴ In evaluating fair housing cases based on circumstantial evidence, the courts have applied the McDonnell Douglas model developed by the Supreme Court under Title VII (employment) cases. Robert Schwemm, “Housing Discrimination – Law and Litigation” §10:2 (2008).

Whether Mr. Wilcox is a member of a protected class

Mr. Wilcox is an African–American and resides with his fiancé and three minor children. He is a member of several protected categories under Vermont’s FHPAA, race and color.

Whether Mr. Wilcox applied for and was qualified for the rental unit

Mr. Wilcox informed Mr. Ruth that he wanted to rent the lower apartment at 7 Clover Street prior to Mr. Ruth renting the unit to the Parkers. Mr. Ruth does not have a formal rental application process and historically has found tenants through word of mouth. Mr. Ruth had told Mr. Lear to keep his eyes open for a tenant and Mr. Lear instructed Mr. Wilcox and Ms. Williams to talk to Mr. Ruth about renting the apartment, which they did. Given Mr. Ruth’s business practice for finding tenants mostly by word of mouth and not using applications, this investigation believes that Mr. Wilcox “applied” for the apartment when he and his fiancé told Mr. Ruth that they wanted to rent the apartment.

Mr. Wilcox had a long positive rental history of twelve years in the same apartment. He admitted to paying his rent over the course of a month, rather than all on the first of the month about 20% of the time, however, the property owner agreed to this arrangement. Mr. Wilcox was not employed at the time he wanted to rent the apartment but he and his fiancé have been able to pay the \$750 rent at their current apartment – their current rent is greater than the rent at the Grove Street apartment.¹⁵

¹⁵ Because Mr. Ruth did not make any inquire into Mr. Wilcox’s rental history or employment history he did not have any of this information to use as a basis to make a rental decision regarding Mr. Wilcox.

Additionally, given the fact that Mr. Ruth decided to rent the apartment to a former tenant who had moved out without giving notice, had a rental payment history similar to Mr. Wilcox's and previously left the apartment he had rented from Mr. Ruth in need of some substantial repair/cleaning this investigation believes that Mr. Wilcox was at least as qualified, if not more qualified, to rent the apartment as the Parkers. This investigation believes the evidence supports the conclusion that Mr. Wilcox applied for and was qualified to rent the apartment at 7 Clover Street.

Whether Mr. Ruth took or failed to take a housing action that adversely affected Mr. Wilcox

Mr. Ruth did not rent the apartment to Mr. Wilcox and his family. This constitutes an adverse housing action against Mr. Wilcox.

Whether the apartment remained available after Mr. Wilcox was rejected

Mr. Wilcox and his fiancé first approached Mr. Ruth about renting the apartment during the first week of July. Both Mr. Wilcox and Mr. Ruth agree that the apartment remained open for a period of time after that. Mr. Parker recalled it was sometime during the last two weeks of July that he approached Mr. Ruth about renting the apartment. Mr. Ruth did not recall when he told Mr. Parker he could rent the apartment.

This investigation believes that based on the evidence there was a minimum of two weeks and up to three and half weeks that the apartment remained empty after Mr. Wilcox told Mr. Ruth he and his family wanted to rent the apartment.

Whether Mr. Ruth offered a legitimate non-discriminatory reason for his adverse housing action

Mr. Ruth stated that he did not rent to Mr. Wilcox because he believed Mr. Wilcox wanted a three bedroom apartment and the City of Rutland building inspectors had told him his rental unit could no longer be used as a three-bedroom unit until the egress window for the third bedroom was replaced with a larger window. Additionally, Mr. Ruth stated that at the time Mr. Wilcox approached him about renting the apartment, he was not sure if he wanted to continue renting the apartment because of the problems he had experienced with the building inspector and the June flood.

Mr. Ruth did offer a legitimate non-discriminatory reason for his refusal to rent to Mr. Wilcox.

Whether the reason offered by Mr. Ruth for the adverse housing action was based on a legitimate non-discriminatory reason or was merely pretext for not renting to Mr. Wilcox

After evaluating all the evidence presented in this case, this investigation believes that the non-discriminatory reasons provided by Mr. Ruth was mere pretext.

Mr. Wilcox and his family told Mr. Ruth that they wanted to rent the downstairs unit and Mr. Ruth refused to rent it to them. Mr. Ruth stated that the reason for not renting the unit to the Mr. Wilcox was because Mr. Wilcox wanted a three-bedroom unit. Since the City of Rutland Building Inspector had told Mr. Ruth that one of the bedrooms could not be used as a bedroom, the unit Mr. Wilcox wanted was no

longer a three-bedroom unit.¹⁶ Mr. Ruth instead leased the apartment to former tenants, the Parkers, who in their first tenancy had moved out without giving proper notice and had left the apartment in poor condition. The Parkers have two children and a step-child who visits them regularly. Mr. Ruth told the Parkers that they could not use the “third bedroom” as a bedroom; however the evidence supports a finding that shortly after taking occupancy the Parkers began using it as a bedroom.

Despite the City of Rutland’s letter stating that the room could not be used as a bedroom, despite the fact that this was the stated reason Mr. Ruth offered for not renting to Mr. Wilcox and despite the Parkers’ less than stellar previous rental experience with Mr. Ruth, Mr. Ruth never inspected the Parker’s unit to make sure they were complying with this important condition of their tenancy until after filing his response to this discrimination charge.

Mr. Ruth received actual notice of the possibility that the Parkers were using the “third-bedroom” on or about August 20, 2008, when he received the HRC discrimination charge. However, he made no effort at that time to address or verify whether the Parkers were using the “third bedroom”¹⁷ despite the fact the rental unit is located next door to his office building. The day prior to filing his response to the HRC discrimination charge, Mr. Ruth via his attorney, sent the Parkers a

¹⁶ This investigation found no evidence to support Mr. Ruth’s claim that Mr. Wilcox or Mr. Lear ever stated that Mr. Wilcox wanted a “three-bedroom apartment.” Mr. Lear stated that as soon as he told Mr. Ruth that Mr. Wilcox “had three children,” Mr. Ruth said Mr. Wilcox could not rent the apartment because of the building inspector’s restriction on that unit. Mr. Ruth did not attempt to follow-up with Mr. Wilcox or his fiancé personally regarding their housing needs. As explained above based on the total size of this unit, Mr. Wilcox and his family could have lived in the unit without using the “third-bedroom” as a bedroom and not violated Rutland’s occupancy ordinances.

¹⁷ Mr. Ruth’s cease and desist letter and his response to this discrimination charge clearly show that he did not take any steps once the Parkers moved in, until just prior to filing his response to this discrimination charge, to assure that the “third bedroom” was not being used as a bedroom.

letter stating that if they were using the “third bedroom” as a bedroom they must cease using it.

Additionally, Mr. Ruth stated that when Mr. Wilcox spoke to him about renting the unit, Mr. Ruth was unsure about whether he wanted to continue renting out the duplex. This investigation found no corroborating evidence to support this premise. Mr. Ruth never told Mr. Wilcox or Mr. Lear that he was uncertain about what to do with the property. As a matter of fact, Mr. Ruth asked Mr. Lear to keep his eyes open for a good tenant. Additionally, within a short period of time after Mr. Wilcox had expressed a desire to rent the apartment Mr. Ruth rented the unit to the Parkers the day they walked in and asked about renting the unit.

Considering all of the evidence Mr. Wilcox has met his burden of proof that Mr. Ruth’s stated reasons for denying him the available housing opportunity was more likely than not, pretext for unlawful discrimination.

PRELIMINARY RECOMMENDATION:

This investigation recommends that the Human Rights Commission find that there are **Reasonable Grounds** to believe that James Ruth discriminated against Allen Wilcox because of his race and/or color in violation of 9 V.S.A. §4503(a)(1) of Vermont’s Fair Housing and Public Accommodations Act.

Ellen T Maxon, Investigator

Date

Approved by:

Robert Appel, Executive Director

Date